INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
A. The Board's findings of fact	2
1. The company's interference with and restraints and coercion of its employees	3
2. The company's discriminatory treatment of employees James, Moistner, Heaston, and Paris	5
3. The unfair labor practice strike	8
B. The Board's conclusions and order	12
C. The court of appeals' decision	13
Argument	14
Conclusion	16

CITATIONS

Cases:

Kohler Co. v. *National Labor Relations Board*, 300 F. 2d 699, certiorari denied, 370 U.S. 911, 345 F. 2d 748, certiorari denied, 382 U.S. 836	15
National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U.S. 240	15
National Labor Relations Board v. *Longview Furniture Co.*, 206 F. 2d 274	15
National Labor Relations Board v. *Plastic Applicators, Inc.*, 369 F. 2d 495	15

263-043—67——1

Cases—Continued Page

National Labor Relations Board v. *Puerto Rico Rayon Mills*, 293 F. 2d 941 15

National Labor Relations Board v. *Wallick*, 198 F. 2d 477 15

National Labor Relations Board v. *Wichita Television Corp.*, 277 F. 2d 579, certiorari denied, 314 U.S. 871 15

Oneita Knitting Mills v. *National Labor Relations Board*, 64 LRRM 2724 15

National Labor Relations Board v. *Thayer Co.*, 213 F. 2d 748, certiorari denied, 348 U.S. 883 ..... 14, 15

Universal Camera Corp. v. *National Labor Relations Board*, 340 U.S. 474 14

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) 2

Section 8(a)(1) 12

Section 8(a)(3) 12

Section 8(a)(4) 12

Section 10(c) 14

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1370

GOLAY & COMPANY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, AND INTERNATIONAL UNION OF UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW–AFL–CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–7a) is reported at 371 F. 2d 259. The Board's decision and order (C.A. 7–34)[1] are reported at 156 N.L.R.B. 1252.

JURISDICTION

The judgment of the court of appeals was entered on December 1, 1966 (Pet. App. 8a–9a). A petition for

[1] "C.A." and "B.A." references are to the separate volumes of the printed record prepared for the court of appeals by petitioner and the Board, respectively. Copies of these documents have been filed with the petition.

rehearing *en banc* was denied on February 6, 1967, and a decree was entered on February 8, 1967 (Pet. App. 10a, 11a). The petition for a writ of certiorari was filed on May 8, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the findings of the Labor Board that the employer restrained and coerced its employees and discriminated against them are supported by substantial evidence.

2. Whether, where strikers have engaged in misconduct in connection with a strike caused by the employer's unfair labor practices, the Board may nonetheless order them reinstated with back pay, if, after balancing the severity of the employer unfair labor practice conduct against the employee misconduct, it concludes that such a remedy would effectuate the policies of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*, are printed at p. 19a of the petition.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

In late September 1962, respondent union started its campaign to organize the employees at petitioner company's Lee Cylinder, Special Products, and Chore Boy plants, located near Cambridge City, Indiana (C.A. 38–39, 54–55; B.A. 9, 38–41, 47–48). Beginning September 26, the union representative in charge of

the campaign conducted a series of employee meetings at the Union Hall, where he formed plant organizing committees and distributed authorization cards, union buttons, and other materials bearing the union's designation (C.A. 38; B.A. 10–14, 28, 29, 41, 49–50, 62–63, 72, 78–79, 92–93, 99, 116–117, 150, 162–163, 196–197, 330–332). The pro-union employees thereafter prominently displayed these organizational indicia at work, passed out union literature on the company's premises, and solicited the support and membership of their co-workers (*ibid.*).[2]

1. THE COMPANY'S INTERFERENCE WITH AND RESTRAINT AND COERCION OF ITS EMPLOYEES

From the outset of the union's campaign in late September until the strike on November 19, 1962, the company opposed the drive by interrogating employees concerning their union activities and that of their fellow employees; engaging in surveillance and inducing employees to engage in surveillance and to report on the union activities of their co-workers; threatening employees with discharge, lay off, and related economic reprisals if they joined or assisted the union; promising and granting employees economic benefits if they refrained from becoming members of or assisting the union; attempting to form a labor organization among its employees; and interfering with the rights of employees to wear the union's insignia at work (C.A. 8, 38–54). Thus, Lee Cylinder

[2] During October 1962, the union filed petitions under Section 9 of the Act for Board elections at the three plants (C.A. 38; B.A. 12–13, 20).

Plant Manager John Bigler openly spied on the September 26 union meeting (C.A. 38–40; B.A. 9–10, 23–24, 103–106, 121–122, 150–151, 177–180, 240–243, 253–254, 318–321, 354–355). Bigler also interrogated employees coercively concerning their union activity and solicited their assistance in the surveillance of concerted activities (C.A. 40–45, 48; B.A. 63, 106, 197–198, 220–221, 278–279, 292).[3] Other representatives of management, including Personnel Director Joseph Lunsford and Lee Cylinder Plant Superintendent Robert Moore, coercively interrogated employees and solicited them to let management "know" if the workers discovered any pertinent organizational information (C.A. 41–45; B.A. 50–52, 72–73, 79, 99, 138–139, 163–164, 181–182, 204, 297, 304–305).

Company representatives repeatedly threatened employees with discharge, lay off, and other economic reprisals if the company was organized (C.A. 42–49, 51; B.A. 29–30, 51–52, 104–106, 151, 157–158, 181–182, 197–198, 203–204, 220–221, 278–279, 292, 297, 310–312, 321–326, 333–335, 342–343, 375–379). For example, in early October, Chore Boy Plant Manager Kenneth Hoover admonished a group of employees that company president "Golay would close the doors or sell out if the Union got in" (C.A. 47; B.A. 29–30, 333–335, 342–343). In addition, there were promises and grants of benefit to employees, conditioned upon their rejecting unionization (C.A. 49–51; B.A. 99–100, 122–

[3] As Bigler instructed one interrogated employee, "if you know anybody that knows anything about the Union, tell them it could mean more money for them" if they would "talk" to the plant manager (C.A. 41; B.A. 106).

123, 180–182).[4] Personnel Director Lunsford invited employees Billy Tyree and Walter Chaney—known union protagonists—to meet with company president C. R. Golay (C.A. 51; B.A. 321–322, 371–376). At that meeting, Golay proposed the formation of a grievance committee in lieu of the union. Tyree and Chaney subsequently advised that the employees "wanted an election," whereupon Golay warned that he "wasn't going to operate under [a] Union" (C.A. 52; B.A. 322–326, 376–379).

2. THE COMPANY'S DISCRIMINATORY TREATMENT OF EMPLOYEES JAMES, MOISTNER, HEASTON, AND PARIS

Employee Jesse James was chiefly instrumental in arranging the September 26 union meeting, which he attended and which Plant Manager Bigler openly observed (C.A. 38–39, 54–55; B.A. 9, 38–42, 47–48). Two days later, Bigler laid off James in disregard of a company-wide seniority policy (C.A. 13, 55, 58, 59; B.A. 36–38, 42–43, 91–92, 174–175, 465–468).[5] Seven

[4] Typical of this repeatedly utilized device was Foreman Ramalez' statement to employee Earl Ford that he had "heard * * * that if [the employees] gave up the idea of a union, [Mr. C. R. Golay] was aiming to give everybody a raise" (C.A. 49–51; B.A. 99–100). And Foreman Fink told employee Edward Herbert that he was going to let him work overtime the following day because Herbert had earlier told Fink that he "took [his] Union button off" (C.A. 50; B.A. 180).

[5] James was told by Bigler that he was being laid off the 100-pound line in the Lee Cylinder plant because he had a bad back and Bigler had decided to "bring [some people from the 20-pound line] over on the 100-pound line" (C.A. 55; B.A. 36, 42–43). But Bigler replaced James with 100-pound line employees having less seniority, and did not lay off other 20-pound or 100-pound line workers (C.A. 58; B.A. 38, 91–92,

days later, Personnel Director Lunsford terminated James for allegedly failing to report for reassignment, although James in fact had reported to the personnel office on two prior occasions and Lunsford's secretary had so advised the Personnel Director (C.A. 55–56, 58, 59; B.A. 43–45, 404–405, 407, 460).[6] Thereafter, a company representative cited James' firing to another pro-union employee, warning that he too had "better watch [his] step * * * they had already gotten rid of" James (C.A. 45; B.A. 104–106).

Employees Melvin Moistner and Walter Heaston were laid off on October 15 and 16, 1962, respectively, and were denied reinstatement until December 3, when the company had effectively eliminated its hard core union supporters and was in dire need of production and maintenance personnel (C.A. 9–15, 16–18, 60–69; B.A. 25–27, 329–330, 333, 337, 468–470, 472). Both employees, like James, were open and active union supporters and both were laid off and denied reinstatement in disregard of company-wide seniority and inter-plant transfer policies (C.A. 9–10, 13, 16–17, 60–61, 66–67; B.A. 11, 27–29, 30–31, 330–333, 335–336, 366–369, 468–469, 473). As Personnel Director Lunsford told Heaston in the presence of other employees when Heaston asked for his job back (C.A. 10, 63; B.A. 21–23, 32–33):

174–175, 465–468). Moreover, James' back condition had been tolerated by the company for two years, and had not interfered with his welding duties on the 100-pound line during the preceding six months (C.A. 55, 59; B.A. 43).

[6] The company in James' case did not follow its usual practice of actively seeking out laid off employees when conditions permitted a return to work (C.A. 58; B.A. 404–405).

> * * * do you mean to tell me you have enough nerve to come back here and ask for your job back after filing charges with the Labor Board. * * * I doubt very seriously if you will ever get back unless the Labor Board puts you back * * *. I seen you down at [the] Converto [plant] passing out union handbills with Melvin Moistner and the union representative. * * *

Employee Paul Paris was suddenly discharged on November 19, 1962. His organizational efforts were well known to company representatives (C.A. 69–73; B.A. 352–360).[7] He was allegedly discharged for removing anti-union literature from the plant bulletin board. Previously, the plant bulletin boards had displayed personal employee notices, which were placed there and removed by the workers without company approval or reprimand (B.A. 234–236, 289–291). About four hours after reporting for work on November 19, Paris was hurriedly summoned into Superintendent Moore's office, accused of removing anti-union literature from the bulletin board, and—although he denied the charge—discharged (C.A. 70; B.A. 360–361, 424).[8] Paris was summarily escorted by Personnel Director Lunsford to the locker room and then "down

[7] Two days prior to Paris' mid-morning discharge, Superintendent Moore warned him that Mr. Golay "didn't like it" that Paris and the other "guys" were a part of the "organizing campaign" (C.A. 69–70; B.A. 359). Moore had earlier warned another employee that "if he knew who [the union promoters were] he would fire them" (C.A. 42; B.A. 51–52).

[8] Management had decided to discharge Paris even before it asked him whether he had taken the literature down from the board (C.A. 70–73; B.A. 360–361, 424). Paris' foreman was not even consulted, as he would normally have been, prior to Paris' mid-morning firing (C.A. 72; B.A. 409–410).

the aisle" and "out of the plant" (C.A. 70–71, 73; B.A. 361).

3. THE UNFAIR LABOR PRACTICE STRIKE

Employee Billy Tyree, having been apprised of co-worker James' sudden firing, summoned other pro-union Lee Cylinder employees to a meeting in the plant parking lot during the noon lunch break on November 19 (C.A. 18, 73; B.A. 67, 120, 361–362, 379–381). Paris informed the assembled group of approximately 30 workers that it appeared that management "was picking them off one at a time," "taking the strongest union men and getting rid of them" (C.A. 18–19, 73; B.A. 67, 120, 379–381).[9] A majority of the assembled workers, in response to a proposal by Tyree, voted to return to the plant after lunch, stand by their respective work stations, and have Tyree, as their spokesman, "inform the Company" that they were protesting the discharge of Paris and wanted his immediate reinstatement. The entire group returned to the Lee Cylinder plant at approximately 11:50 a.m. (C.A. 19, 73–84; B.A. 380–382).[10] Shortly after enter-

[9] The discharges of employees James, Paris, and the other union supporters were discussed (C.A. 18–19, 22–23, 73; B.A. 63, 93–94, 139–140, 164–165, 182–183, 193, 280–281, 293, 379–381). In addition, the assembled employees were well aware of the company's coercive conduct, which had been extensive during the prior seven weeks when the company was attempting to defeat the employees' organization drive (C.A. 23).

[10] Despite the vote taken at this meeting, approximately half of the group, as well as those workers who later joined in sympathy, did resume work upon entering the plant and, for the most part, worked most of their scheduled shift that afternoon (C.A. 19; B.A. 53–56, 73–76, 85–88, 112–114, 117–119, 100–101, 166–167, 243–247, 79–82, 133–134, 292–294, 63–65, 93–96, 461).

ing the plant, Tyree informed his line foreman of the protest vote and the foreman—after telling Tyree to "just sit tight" (B.A. 408)—immediately relayed the information to higher management. Twenty minutes later, Tyree—having heard nothing from the company's representatives—asked the foreman what the employer intended "to do" about Paris, and the foreman replied: "We're not going to do anything * * * I'm waiting on a phone call" (C.A. 19, 74; B.A. 381–385).

Thereafter, from 12:45 to 3:00 p.m., management conducted three separate polls among the employees, asking them whether they intended to work. Some employees, in response to one or more of the polls, expressly refused to work; some stood mute; and some agreed to work and were assigned various tasks, which they performed. By 4:00 p.m., 34 workers had been discharged at various times during the afternoon because they refused to work or stood mute when polled (C.A. 19–26; B.A. 6–8). Of the 34 discharged employees, approximately half remained on the employer's premises from one and one-half to three hours after being discharged; the others remained an hour and a quarter or less; the average time spent by the employees on the plant premises after having been told they were discharged was an hour and a half (C.A. 20; B.A. 53–57, 64–65, 73–74, 80–82, 85–88, 94–96, 100–103, 107–109, 112–114, 118–119, 123–125, 127–129, 131, 134–136, 141–142, 152–153, 155–156, 159–160, 184, 187, 189–191, 193–194, 199–201, 206–208, 212–213, 221–222, 224–225, 230–231, 237–238, 244–246, 250–251, 273–274, 281, 287, 293–294, 298–299, 305–309, 315–316,

327–328, 347–350). Many of the discharged workers were never ordered, during the polling, to vacate the employer's premises (C.A. 22, n. 8; B.A. 57, 65, 68, 70, 74, 77, 81, 88, 95, 101, 113–114). During the afternoon, there was no violence or act of defiance against the plant management or supervisory personnel. Company representatives moved freely throughout the plant. Almost half the normal day shift worked the entire day and even the vast majority of the striking employees worked most of their scheduled shift. Non-striking employees were not prevented from working. Most of the night shift reported for work that evening. (C.A. 18–26; B.A. 56–58, 65–66, 73–75, 77, 80–83, 87–89, 94, 101, 109–110, 112–113, 125–126, 145, 153, 155–156, 159–160, 166–168, 171, 186, 200, 205–206, 209, 211–212, 226, 230, 245–247, 274–275, 276, 282, 293–294, 299–300, 301–302, 310, 315–316, 396–397, 351–352, 416–418, 437.) [11] The union representative in charge of the campaign, after being advised of what had occurred in the plant, hurried to the scene. Arriving at about 4:00 p.m., he instructed the workers to leave the plant. Those who had

[11] Thus, Foreman Fink, in charge of the 100-pound line where the main body of protesters worked; assigned his non-striking employees various duties that afternoon, and they were not "prevented" from working; nor did he witness strikers "shut off machinery," "commit any acts of violence or destruction of property," or prevent incoming night shift employees from working (C.A. 18–26; B.A. 410–414). Supervisor Jones also did not "see anyone physically obstruct employees from working" (B.A. 423–424), and company president Golay, as well as his supervisory personnel, walked unimpeded on the production floor during the course of the afternoon (B.A. 396–397).

remained then left (C.A. 20, 157–158; B.A. 14–16, 385).[12]

The striking employees commenced picketing the Lee Cylinder plant at 6:00 a.m. on November 20, and continued thereafter for over two weeks (C.A. 20–21, 26–27, 158–159; B.A. 61, 389–390). The picketing was confined to the entrance of the company's main parking lot, an unfenced area through which employees approached the plant working areas. Company president Golay saw approximately 40 pickets during the morning hours on November 20 (C.A. 20, 26; B.A. 400–402, 406–407, 431–432). Although the first few cars of non-striking workers were stopped at the picket line briefly, the cars were able to enter after Golay openly and repeatedly exhorted the drivers to "run over the sons of bitches," and dispersed the cars (B.A. 172–174, 395–396, 70). No car was actually prevented from entering and employees passed through the line unmolested. The peace officers present at the picket line neither made arrests nor considered the strikers disorderly; the pickets adhered to their instructions. From 7:30 a.m. on November 20 to the end of the two week strike, the picketing continued without incident (C.A. 21, 26–27; B.A. 61–62, 70, 146–149, 172–174, 214, 216, 225–226, 256–257, 264–265, 270–271, 276, 398–402, 406–407, 418–419, 421–422, 431–438, 449–457).

[12] The union representative advised company personnel director Lunsford, upon his arrival, "Joe, you are able to settle this in a very few minutes * * * return the people to their jobs." Lunsford told the representative that he was "trespassing" and "should move off" (B.A. 15, 167–168).

At the end of the strike, the 34 employees discharged on November 19, and 8 additional employees who joined the strike on November 20, were denied reinstatement by the company despite their unconditional offer to return to work (C.A. 27–29).

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that the company, in opposing the union's organizational campaign, engaged in widespread coercive conduct in violation of Section 8(a)(1) of the Act (C.A. 8), and discriminated against employees James, Moistner, Heaston, and Paris, in violation of Section 8(a)(3) of the Act (C.A. 9–18).[13] In addition, the Board found that, since the 42 employees had struck against the company's unfair labor practices, the company further violated Section 8(a) (3) and (1) by denying reinstatement to them at the end of the strike (C.A. 18–27). The Board rejected the company's defense that the striking employees had, by in-plant loitering and "mass picketing," engaged in unprotected activity which justified their discharge or the employer's refusal to reinstate them. Alternatively, the Board held that, even if the strikers' conduct were assumed to be unprotected, the conduct was not of such a "serious nature in the total circumstances of this case to warrant a denial of * * * reinstatement when measured against the company's massive unfair labor practices" (C.A. 26).

[13] In Heaston's case, the Board further concluded that the company's denial of recall also violated Section 8(a)(4), because an unfair labor practice charge had been filed with the Board on behalf of that employee (C.A. 15).

The Board ordered the company to cease and desist from the unfair labor practices found; to reinstate employees James and Paris and reimburse them and employees Heaston and Moistner for any loss in earnings resulting from the discrimination against them; to reinstate the 42 unfair labor practice strikers and reimburse them for any loss in earnings; and to post notices of the Board's action (C.A. 29–33).

C. THE COURT OF APPEALS' DECISION

The court of appeals sustained the Board's findings that the company had violated Section 8(a)(1) of the Act and discriminated against employees James, Moistner, Heaston, and Paris (Pet. App. 3a). The court further agreed that substantial evidence supported the Board's finding of protected activity with respect to 19 of the 42 unfair labor practice strikers, but declined to sustain the finding as to the remainder, stating, "we need not and do not decide whether the other [23] discharges constituted similar violations or whether the alleged misconduct was protected" (Pet. App. 4a). However, the court accepted the Board's alternative rationale, concluding (Pet. App. 6a) that "the Board was justified in ordering reinstatement of the employees involved" since the "strike and picketing was caused by Golay's 'massive' unfair labor practices" and the employee "misconduct was not of such a serious nature in the total circumstances of this case as to warrant denial of their reinstatement."

ARGUMENT

The decision of the court below is correct and is not in conflict with any other decision. There is no occasion for further review.

1. Petitioner contends (Pet. 7–8) that the Board's unfair labor practice findings, sustained by the court below, are not supported by substantial evidence. Such evidentiary issues do not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491. In any event, the Board's findings are amply supported by the record (Statement, *supra,* pp. 2–12) and indeed, although petitioner asserts (Pet. 7–8) that the Board, "with the acquiescence of" the court of appeals, "has rewritten the facts to support a decision," the company makes no attempt to controvert in its petition the substantial, credited testimony supporting the Board's findings.

2. Petitioner also challenges (Pet. 8–9) the validity and application of the *Thayer* principle, announced in *National Labor Relations Board* v. *Thayer Co.,* 213 F. 2d 748 (C.A. 1), certiorari denied, 348 U.S. 883. *Thayer* holds that, where a strike is caused by the employer's unfair labor practices, the mere fact that employees have engaged in misconduct during the strike does not disqualify them from reinstatement and back pay; the Board, after balancing the employer's unfair labor practices against the employee misconduct, still may properly conclude that a remedy for the employees would effectuate the policies of the Act. This principle is consonant with Section 10(c) of the Act (Pet. App. 19a), which confers

broad remedial authority on the Board, and has been accepted by every circuit that has had occasion to consider its validity.[14] Petitioner's attack on the *Thayer* principle does not warrant review by this Court.

Petitioner's further contention that the principle was improperly applied here raises no issue of general importance, since it turns on the facts of this particular case. In any event, the Board plainly did not abuse its discretion in concluding that the company's "massive" unfair labor practices far outweighed in gravity any employee misconduct which occurred, and thus that it would effectuate the policies of the Act to order all of the strikers reinstated with back pay.[15]

---

[14] *National Labor Relations Board* v. *Puerto Rico Rayon Mills*, 293 F. 2d 941, 947 (C.A. 1); *Kohler Co.* v. *National Labor Relations Board*, 300 F. 2d 699, 702–705 (C.A. D.C.), certiorari denied, 370 U.S. 911, 345 F. 2d 748 (C.A. D.C.), certiorari denied, 382 U.S. 836; *Oneita Knitting Mills* v. *National Labor Relations Board*, 64 L.R.R.M. 2724. See, also, *National Labor Relations Board* v. *Wallick*, 198 F. 2d 477, 484 (C.A. 3); *National Labor Relations Board* v. *Wichita Television Corp.*, 277 F. 2d 579, 585 (C.A. 10), certiorari denied, 364 U.S. 871; *National Labor Relations Board* v. *Plastic Applicators, Inc.*, 369 F. 2d 495, 497–498 (C.A. 5).

The decisions relied upon by petitioner (Pet. 12–13), to demonstrate a conflict among the circuits are clearly distinguishable. See Brief For the National Labor Relations Board in Opposition, filed in *Kohler Company* v. *National Labor Relations Board*, No. 353, October Term, 1965, pp. 21–24. As we there point out, the decisions in question involved either no employer unfair labor practices or none that could be said to have provoked the employee misconduct.

[15] In sharp contrast to the facts here, *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240, involved a sit down strike, and *National Labor Relations Board* v. *Longview Furniture Co.*, 206 F. 2d 274 (C.A. 4), a criminal

CONCLUSION

The petition for a writ of certiorari should be denied.[16]

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
FRANK H. ITKIN,
Attorney,
National Labor Relations Board.

MAY 1967.

---

assault. In this case, as the court of appeals found, "the November 19 strike did not come within the term 'sitdown' strike" and the employees' conduct did not "amount to 'seizure of control'" (Pet. App. 5a).

[16] Respondent union was allowed to intervene in the court below. It has advised us after examination of this brief in opposition that it concurs in the views expressed herein and will not file a separate response to the petition for certiorari.

U.S. GOVERNMENT PRINTING OFFICE: 1967